IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 4362 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DR PRATIMABEN P JOSHI

Versus

STATE OF GUJARAT

Appearance:

MR NITIN M AMIN for Petitioner

Mr.S.T. Mehta, A.P.P. for Respondent No. 1

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 06/12/2000

ORAL JUDGEMENT

Rule. Learned A.P.P. Mr. S.T. Mehta, waives service of rule on behalf of the respondent no.1-State.

1. The petitioner has prayed to quash and set aside the proceedings of Criminal Case no.1940/1983, 1942/1983 and 1943/1983 pending in the Court of learned Chief Judicial Magistrate, Surat, on the ground that after taking cognizance of the case, no proceedings have proceeded further in any of the cases till the date of filing of the present petition.

2. The petitioner was serving as an Incharge, Medical Officer at District T.B. Clinic, Surat, from 1st December, 1977 to 31-8-1978. That on 10-7-1977 to 24-10-1978 audit was made in respect to books of account and other records of the said hospital by the concerned Auditing Bank and it was found that an amount of Rs.4,55,181.73ps were withdrawn preparing extra bills, vouchers etc.

That pursuant to the report of the auditor dated 6-12-1978 an FIR was lodged against the present petitioner and one Bhupendra Narmadashanker Bhatt vide CR no.445/1978 at Athwa Lines Police Station, Surat, in respect to offences made punishable under Secs.409,467, 468, 471, 477-A and 120-B of the Indian Penal Code. That on conclusion of investigation, charge-sheet was filed in the Court of learned Chief Judicial Magistrate, Surat, against the petitioner and other four accused. That charge was framed against the accused and the accused having pleaded " not guilty" all the accused were put to trial. That the learned Chief Judicial Magistrate vide judgment and order dated 8-6-1988 acquitted the accused holding that prosecution has failed to establish the charge against the accused including the present petitioner.

3. That being aggrieved and dissatisfied with the said order of acquittal, the State of Gujarat preferred Criminal Appeal no.836/1988 in this Court which was admitted but after final hearing vide judgment and order dated 24th December, 1998, the said appeal was dismissed, and as such, the acquittal of the present petitioner in respect to said charge was confirmed and have become final as no further proceedings were initiated by the State to the Supreme Court. That thereafter, again an FIR was lodged against the present petitioner vide CR no.162/1980 on 17-5-1980 at Athwa Lines Police Station in respect to audit report for the period from 17-10-1977 to 24-10-1978. That the said FIR was based on some of the entries of the books of account which were audited and on the basis of the audit report, criminal prosecution was filed against the petitioner, which failed. However, in the matter of CR no.162/1980, charge-sheet was filed by

the police on 16-9-1983 separating the period of alleged misappropriation and dividing the charge-sheet into three different parts on the basis of which Criminal Case nos.1940/1983, 1942/1983 and 1943/1983 were registered in the Court of Chief Judicial Magistrate, Surat.

The petitioner has contended that since the date of filing of charge-sheet and taking cognizance by Chief Judicial Magistrate no proceedings have proceeded further till the date of this petition. That on account of said procedural failure, the fundamental right of the petitioner conferred by Article 21 in respect to speedy trial has been seriously impaired and the petitioner has been under constant pressure pending prosecution and in view of settled proposition of law as no proceedings have proceeded further since 1983 till this date, above stated all the three complaints should be quashed and set aside. On filing of the present petition, show cause notice was issued and report was called from the District Judge, Surat in respect to status of the said criminal cases pending in the Court of Chief Judicial Magistrate, Surat. That vide letter dated 30-10-1999, the District Judge, Surat ha informed that record and proceedings of Criminal Cases not being traceable since long, no status report could be provided. That despite making a strenuous effort, the department was not in a position to trace out the record. Similarly, learned A.P.P. was directed to collect information from his counterpart P.P. at Surat and to collect information, if any, in respect to proceedings of said criminal cases. That Shri D.L. Mahida, Police Sub Inspector, Athwa Lines Police Station has filed affidavit sworn on 2nd December, 2000 which is taken on record and it is stated therein that he had made personal inquiries in the Court of Chief Judicial Magistrate, Surat, in respect to aforesaid three criminal cases and he found that date fixed for evidence lastly was on 24-9-1985, and thereafter, the case having not come up or noted in case dairy or daily board of the Court, and as such, there is no further progress in prosecution of the said criminal case.

4. On the basis of the aforesaid facts, it has to be concluded that in the proceedings of Criminal Cases since the filing of charge-sheet till this date, no progress has been made and cases have remained only in the record room where also, the same are not traceable. That there is no explanation either on the part of the prosecution so as to explain inordinate delay in commencing the trial in respect to said criminal cases. So far as the Court record is concerned, the only fact stated is that the cases not being traceable have not been notified on board

for further prosecution.

That in the matter of SANTOSH DE VS. ARCHANA GUHA AND ORS., AIR 1994 SC 1229, the Apex Court having construed the impact of Article 21 on unexplained inordinate delay and prosecution of a pending trial, has held that if such delay could not be attributed to accused, the proceedings should be quashed. Furthermore, in the matter of K.E. MAHABALESHWARA V. STATE OF KARNATAKKA, 1999 CRI. L.J 2412, the Karnatakka High Court has observed vide paragraphs 6, 9 and 11 that in a case for the offence of misappropriatioin of money against a public servant fixing progress in trial for 11 years after cognizance of offence was taken by the Court, it would amount to infringement of the fundamental right of the accused conferred vide Article 21 of the Constitution regarding speedy trial and if the said delay is not attributable to the accused the proceedings against the accused are liable to be quashed.

5. In the instant case, considering the overall facts apparent from the material, it could not be disputed that alleged misappropriation of money by the petitioner and other accused ascertained on the basis of audit report was substantially tried in a competent Court and the Court has exonerated the petitioner and other accused by acquitting them in the criminal trial as early as 1983 and the acquittal was confirmed by the High Court against which no proceedings were carried to the Supreme Court. However, on the basis of few entries from the audit again the present three criminal cases are filed against the petitioner for the same offence in the year 1983 and since then though charge-sheets are filed, no progress has been reported till this date and there is no explanation of prosecution as to why the proceedings have been delayed. As such, delay being an inordinate delay infringing the fundamental right of the accused conferred under Article 21 of the Constitution, following the above stated dicta, I am constrained to hold that the proceedings of the said three criminal cases deserves to be quashed and set aside. Hence, the following order:

The petition is allowed. Criminal Cases nos.1940/1983, 1942/1983 and 1943/1983 pending in the Court of learned Chief Judicial Magistrate, Surat, are hereby quashed and set aside. Rule to that extent is made absolute with no order as to costs.

(A.K.Trivedi,J.)

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